

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MAE SELLERS

PLAINTIFF

VS.

CIVIL ACTION NO. ~~2:21-cv-00148-HSO-RHWR~~

VOLKSWAGEN AG,
VOLKSWAGEN OF AMERICA, INC. and
VOLKSWAGEN OF AMERICA
CHATTANOOGA OPERATIONS, LLC

DEFENDANTS

NOTICE OF REMOVAL

TO: Melissa Duckworth
Covington County Circuit Clerk
101 South Elm Avenue
Collins, MS 39428

Clarence McDonald Leland
CLARENCE McDONALD LELAND, LTD.
P. O. Box 1466
Brandon, MS 39043

Hunter W. Lundy
LUNDY, LUNDY, SOILEAU & SOUTH LLP
P. O. Box 3010
Lake Charles, LA 70602

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1332, 1441 and 1446, Defendants Volkswagen Group of America, Inc. (“VWGoA”) (incorrectly named “Volkswagen of America, Inc.”), and Volkswagen Group of America Chattanooga Operations, LLC (“VW Chattanooga”) (incorrectly named as “Volkswagen of America Chattanooga Operations, LLC) (collectively, “the Volkswagen Defendants”), remove to this Court the state-court action described in paragraph 1., below:

THE REMOVED CASE

1. The removed case is a civil action initially filed on June 21, 2021, in the Circuit Court of Covington County, Mississippi, having been assigned Case No. 2021-130C-1, and styled

Mae Sellers v. Volkswagen AG, Volkswagen of America, Inc. and Volkswagen of America Chattanooga Operations, LLC.

PAPERS FROM REMOVED CASE

2. As required by 28 U.S.C. §1446(a), attached as Exhibit A is a copy of all process, pleadings and other orders served upon the Volkswagen Defendants. A copy of the state court record is attached as Exhibit B.

THE REMOVAL IS TIMELY

3. This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is being filed within 30 days from the time the Volkswagen Defendants were served with the Summons and Complaint and within one year of the commencement of this action. Plaintiff's Complaint was filed on June 21, 2021. The Volkswagen Defendants were both served on October 19, 2021. Upon information and belief, Volkswagen AG has not been served as of the date of this removal notice, and therefore is not needed at this time for Removal.

THE VENUE REQUIREMENT IS MET

4. Venue of this removal is proper under 28 U.S.C. §1441(a) because the United States District Court for the Southern District of Mississippi, Eastern Division, includes Covington County, the county in which the state court action is now pending.

**DIVERSITY OF CITIZENSHIP EXISTS
BETWEEN THE PROPERLY JOINED PARTIES**

5. This is a civil action that falls under the Court's original jurisdiction under 28 U.S.C. §1332 (diversity of citizenship) and is one that may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§1441 and 1446.

6. According to the Complaint, Plaintiff is an adult resident citizen of the State of Mississippi. *See* Exhibit B, Complaint, ¶1.

7. Defendant VWGoA is, and at the time the action was commenced was, a corporation organized under the laws of New Jersey, with its principal place of business in Virginia. Defendant

VW Chattanooga is, and at the time the action was commenced was, a corporation organized under the laws of Tennessee with its principal place of business in Tennessee. Defendant Volkswagen AG, which has not been served at this point in time, is a German corporation with its principal place of business in Germany. Therefore, all three (3) named defendants are not considered citizens of Mississippi.

8. Because the Plaintiff is a citizen of the State of Mississippi and VWGoA, VW Chattanooga, and Volkswagen AG are not, complete diversity exists under 28 U.S.C. §1332.

THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS SATISFIED

9. Plaintiff fails to allege a specified amount of damages in her Complaint; however, it is evident on the face of the Complaint that the amount-in-controversy in this action exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

10. Plaintiff seeks damages for injuries allegedly caused to her neck, shoulder and back which have allegedly caused her “great pain and suffering, depression, loss of sleep, loss of earnings, and has contributed to her disability and inability to work as well as other injuries to be proven at trial.” Plaintiff has demanded compensatory damages for her injuries as well as punitive damages. *See* Exhibit B, Complaint, ¶¶ 6 and 9.

11. Plaintiff’s unspecified claims for punitive damages satisfy the amount in controversy requirement for federal jurisdiction. *See Ross v. First Family Fin. Servs., Inc.*, 2002 U.S. Dist. LEXIS 23212 *8 (N.D. Miss. Aug. 29, 2002) (stating that federal courts sitting in Mississippi have “routinely held that unspecified claims for punitive damage sufficiently serve to bring the amount in controversy over the requisite jurisdictional threshold set out in 28 U.S.C. §1332”); *Colony Insurance Co. v. Ropers of Hattiesburg, LLC*, 2011 U.S. Dist. LEXIS 34026 *3 (S.D. Miss. Mar. 29, 2011) (stating that “federal courts in Mississippi have consistently held that a claim for an unspecified amount of punitive damages is deemed to exceed the federal jurisdictional minimum” (internal citation omitted)).

12. Thus, the state court action may be removed to this Court by the Volkswagen Defendants in accordance with the provisions of 28 U.S.C. §1441(a) because (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Mississippi, Eastern Division (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

FILING OF REMOVAL PAPERS

13. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice is being served upon all parties or their counsel and filed with the Clerk of the Circuit Court of Covington County, Mississippi.

14. The Volkswagen Defendants serve this notice and hereby remove this case pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and Plaintiff is notified herein that she should proceed no further in this case in the Circuit Court of Covington County, Mississippi, unless by Order of the United States District Court for the Southern District of Mississippi, Eastern Division.

WHEREFORE, the Volkswagen Defendants hereby remove the above-captioned action from the Circuit Court of Covington County, Mississippi, and request that further proceedings be conducted in this Court as provided by law.

This the 16th day of November, 2021.

Respectfully submitted,

**VOLKSWAGEN GROUP OF
AMERICA, INC. and VOLKSWAGEN
GROUP OF AMERICA CHATTANOOGA
OPERATIONS, LLC**

s/David L. Ayers

David L. Ayers

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, David L. Ayers, the undersigned attorney, do hereby certify that I have this day forwarded via email and United States Mail, first class, postage prepaid, a true and correct copy of the above and foregoing to the following:

Clarence McDonald Leland
CLARENCE McDONALD LELAND, LTD.
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Hunter W. Lundy
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This the 16th day of November, 2021.

s/David L. Ayers
David L. Ayers